

COMPLIANCE BOARD OPINION 03-15

August 8, 2003

Ms. Amanda Spake, President
Mr. Paul Roche, Vice President

The Open Meetings Compliance Board has considered your complaint that the Franklin Point/Shady Side Parks Master Planning Committee violated the Open Meetings Act in connection with several meetings. For the reasons set forth below, the Compliance Board finds that there was no violation, because the Committee is not a “public body” subject to the Act.

I

Complaint and Response

The complaint alleged, in general terms, that the Franklin Point/Shady Side Parks Master Planning Committee had engaged in a pattern of violations of the Open Meetings Act. The complaint pointed out that the Committee performs an advisory function – namely, to advise Anne Arundel County regarding the future use of certain property. The complaint alleged, more specifically, that the Committee violated the Act by failing to provide proper notice of its meetings on April 22, May 17, and June 17, 2003. In addition, the complaint alleged that, at the June 17 meeting, the Committee improperly denied a radio station the opportunity to tape the meeting.

In a timely response on behalf of the Anne Arundel County Director of Recreation and Parks, Senior Assistant County Attorney Patricia A. Logan denied that the Act had been violated. She explained that, pursuant to an agreement with the Maryland Department of Natural Resources (“DNR”), Anne Arundel County is managing the property in question. The agreement requires the County to “develop a master plan by virtue of a public planning process.” To carry out this requirement, “the Director of Recreation and Parks established the Committee in January 2003. The Committee consists of eleven citizens and two representatives of DNR.... The Committee was established by [the Director] through the very informal process of sending letters of invitation to various community members.” In light of this method of its creation, the response contended that the Committee is not a “public body,” as that term is defined in the Open Meetings Act. The response went on to observe, however, that notice of the Committee’s meetings had generally been given and

would continue to be provided, although recording of the meetings would not be permitted.¹

II

Analysis

The Open Meetings Act does not apply to a meeting unless the entity holding a meeting is a “public body.” For example, with respect to notice of a meeting, the Act provides: “Before meeting in a closed or open session, a *public body* shall give reasonable advance notice of the session.” §10-506(a).² All other substantive and procedural requirements in the Act are linked to the status of “public body.”

Under the definition in §10-502(h), an entity is a “public body” if it satisfies specified criteria for its composition and its creation. One is that a public body must consist of at least two members. §10-502(h)(1)(i). The Committee meets this criterion. A multi-member entity is not a public body, however, unless it was created in a manner described in the definition. That is, ordinarily an entity is a public body if it was created by one of the formal legal enactments identified in the definition.³ The Committee was not created through any of these formal legal enactments.

Alternatively, a multi-member entity can qualify as a public body, despite not having been created in one of these formal instruments, if its membership includes at least two individuals from outside the government and the appointments were made by the Governor or the chief executive authority of a political subdivision. §10-502(h)(2)(i). The Committee includes more than two individuals from outside government in its membership, but the Committee members were not appointed by the County Executive, who is the chief executive authority of Anne Arundel County. Rather, the appointments were made informally by the Director of Recreation and Parks. The Director is not the County’s chief executive authority. Consequently, the Committee does not meet the definition of “public body” in the Act.

¹ On this point, the response stated: “County staff has requested that meetings not be recorded primarily as a courtesy to citizen Committee members who may feel constrained in the Committee’s proceedings by the fact of being taped and broadcast.”

² All references in this opinion are to the State Government Article, Maryland Code.

³ These are: the Maryland Constitution; a State statute; a county charter; an ordinance; a rule, resolution, or bylaw; an executive order of the Governor; or an executive order of the chief executive authority of a political subdivision. §10-502(h)(1)(ii).

Because the Committee is not a public body, it is not governed by the Open Meetings Act. The manner by which the Committee gives notice of its meetings and its decision whether to allow tapings at its meetings are matters within the Committee's discretion (assuming that no other law is applicable to these matters).

III

Conclusion

The Open Meetings Compliance Board finds that the Franklin Point/Shady Side Parks Master Planning Committee is not a public body subject to the Open Meetings Act. Therefore, the Act could not be violated by any of the Committee's procedures with respect to notice or conduct of its meetings.

OPEN MEETINGS COMPLIANCE BOARD

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